

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JACKIE DUTTON, Administrator
of the Estate of THOMAS DUTTON,
Deceased,**

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 04-0103-DRH

ORDER

HERNDON, District Judge:

On January 4, 2007, the Court held a telephone hearing on Plaintiff's motion for leave to re-declare Dr. Christine Paylan as Plaintiff's expert and to admit her deposition as an evidence deposition (Doc. 128). Based on the reasons stated during the hearing and on the following, the Court grants in part and denies in part Plaintiff's motion. The Court finds that it is unnecessary to re-declare Dr. Paylan as an expert because Plaintiff never withdrew Dr. Paylan as an expert in this matter. Thus, the Court **DENIES** that portion of Plaintiff's motion as unnecessary. Further, relying on **FEDERAL RULE OF CIVIL PROCEDURE 32** and **FEDERAL RULE OF EVIDENCE 804**, the Court **ALLOWS** Plaintiff to use Dr. Paylan's deposition as an evidence deposition. Balancing the equities in this case, the Court finds that the prejudice to Plaintiff outweighs the disadvantages to Defendant if Plaintiff was not allowed to use Dr. Paylan as an expert and was not allowed to use Dr. Paylan's deposition as an

evidence deposition. Lastly, the Court **VACATES** its November 7, 2006 Order granting Defendant's motion to extend dispositive motion deadline (Doc. 123) and **DENIES as moot** Defendant's motion for summary judgment (Doc. 125). The Court **SETS** this matter for bench trial on June 19, 2007 at 9:00 a.m.

IT IS SO ORDERED.

Signed this 4th day of January, 2007.

/s/ David RHerndon
United States District Judge